1 B. & S. 272. If an article is to be made by the seller especially for the buyer and of a kind not readily marketable in the ordinary course of the seller's business, the contract is for work and materials, according to the familiar "Massachusetts" rule. Otherwise it is a contract for the sale of goods. *Goddard* v. *Binney,* 115 Mass. 450. When the seller is to make the goods, New York courts hold that since the goods are not in existence the contract is for work and materials. *Warren Chemical, etc. Co.* v. *Holbrook,* 118 N. Y. 586. But if a third party is to do the manufacturing, the American rules suddenly change. The Massachusetts court calls the deal a contract for the sale of goods, apparently without regard to the marketability of the things made. *Smalley* v. *Hamblin,* 170 Mass. 380. New York abandons as its test the existence or non-existence of the goods, and adopts that of their marketability. If they can be readily sold the contract is within the Statute of Frauds. *Juillard* v. *Trokie,* 124 N. Y. Supp. 121. If they can not, the contract is for work and materials, and so not within the Statute as held in the principal case. This view is also taken in *Bird* v. *Muhlinbrink,* 1 Rich (S. C.) 199. The American ruling seems to depart from the strict letter of a statute which itself makes no exceptions. The SALES ACT expressly provides that "if the goods are to be manufactured *by the seller* especially for the buyer, and are not suitable for sale to others in the ordinary course of the seller's business," the 'goods, wares, and merchandise' section of the Statute of Frauds shall not apply. Probably in cases arising under the SALES ACT the courts will confine themselves to the strict letter of the exception provided.

SALES—RETENTION OF POSSESSION BY THE VENDOR AS FRAUD.—X sold his office furniture to the defendant, and later mortgaged it to the plaintiff, neither of whom took possession at the time of the respective transactions. There was no actual fraud involved. Later the defendant took the furniture, upon which the plaintiff replevied it. *Held,* that the defendant, having first taken possession, was the rightful owner of the goods. *Patchin* v. *Rowell,* (Conn. 1912) 85 Atl. 511.

In such cases the following question arises:—What is the effect of possession obtained by one of the rival claimants (1) in jurisdictions where retention of possession by the seller is not conclusive evidence of fraud, (2) in jurisdictions where such retention is conclusive evidence of fraud? Under the former rule, it has been held that the title of a purchaser who has not received the goods is inchoate, and the second purchaser or the attaching creditor who secures possession gets the title even though the prior purchaser has not had a reasonable time in which to get possession. *Lanfear* v. *Sumner,* 17 Mass. 109. But it has also been held that the title is not inchoate, and that in the absence of actual fraud the first purchaser is protected even though the second or the attaching creditor secures possession. *Meade* v. *Smith,* 16 Conn. 345; *Wilson* v. *Walrath,* 103 Minn. 412; *Hombeck* v. *Van Metre,* 9 Ohio 153; and the cases in all states where retention by the vendor is only *prima facie* evidence of fraud, excepting Massachusetts. Where retention by the vendor is conclusive evidence of fraud, the weight of

authority is clearly that, in the absence of actual fraud, the sale is not void as against creditors if the purchaser takes possession before they attach the property. *Western Mining Supply Co.* v. *Quinn,* 40 Mont. 156, 28 L. R. A. N. S. 214. The court suggests that if the vendor retains possession, and credit is extended to him after the sale, or he mortgages or sells the property, then the rights of the first purchaser are cut off even though the other claimant does not get possession. *McIntosh* v. *Smiley,* 32 Mo. App. 125. This seems sound, the reason for the whole doctrine of conclusively presumed fraud being apparently that the neglect or fault of the buyer has misled others to their prejudice. *Crawford* v. *Ferristall,* 58 N. H. 114. The same ground was taken in *Capron* v. *Porter,* 43 Conn. 383, but this was modified by *Huebler* v. *Smith,* 62 Conn. 186, and now the Connecticut rule appears to be that the presumption of fraud is conclusive only if the second claimant has taken possession. It seems curious that, having decided in *Meade* v. *Smith, supra,* that title against third parties was not inchoate before delivery, the Connecticut court should make the question of fraud in law depend on whether the second claimant is first to obtain possession of the goods. Where one trusting in appearances has made an advance and taken a mortgage on specific goods as security, why should his rights against a prior purchaser depend on his taking possession? The cases and statutes bearing on this point may be found collected in WILLISTON, SALES, § 349 and in 24 L. R. A. N. S. 1127.

WILLS—CONSTRUCTION OF "ISSUE"—PERPETUITIES.—Testator left surviving him two sons and two daughters. He devised his real estate to one of his daughters for life, and at her death to go to her children, and in the event of failure of issue of the daughter "before or after her death" the property was to go over to the testator's other children. The daughter died leaving one child. *Held,* that the word "issue" was used in the sense of heirs and meant indefinite failure of issue; that after the death of the daughter her child took an absolute fee, and the limitation over to the testator's other children was void as creating a perpetuity. *Miller* v. *Miller,* (Ky. 1913) 152 S. W. 542.

The word "issue" is ambiguous and has caused the courts much trouble. It may embrace all the lineal descendants of any degree, or it may mean the first generation only. In its technical legal sense and when not restrained by the context, it comprehends objects of every degree. 2 BIGELOW'S JARMAN, WILLS (5 Am. Ed.) 101; ROOD, WILLS, § 445; *Jackson* v. *Jackson,* 153 Mass. 374, 2 L. R. A. 305. The court in the principal case pointed out that it could scarcely have been used to mean children, for the use of the words "after her death" precluded such an idea. The estate created in the principal case was what would have been an estate tail at the common law, and this by the Kentucky statute (§ 2343) has been converted into a fee simple. Notwithstanding the provision of this statute, so far as appears the rule in Shelley's Case has never been introduced into Kentucky. *Turman* v. *White's Heirs,* 53 Ky. 450; *Stephenson* v. *Hagan,* 54 Ky. 282. At the common law a remainder limited to take effect immediately on the determination of an